DISTRIBUTED

DEC 27 1985

Supreme Court, U.S.
FILED
DEC 23 1985
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-787

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

RUSSELL D. DAVES,
APPELLANT

V.

THE STATE BAR OF TEXAS,
APPELLEE

ON APPEAL FROM THE
SUPREME COURT OF TEXAS

SUPPLEMENTAL BRIEF

COUNSEL OF RECORD:

STEVEN D. PETERSON
GENERAL COUNSEL
STATE BAR OF TEXAS
P.O. BOX 12487
AUSTIN, TEXAS 78711
(512) 463-1381

ADELE M. WINN
ASSISTANT GENERAL COUNSEL

TABLE OF CONTENTS

Page

SUPPLEMENTAL STATEMENT 1

CERTIFICATE OF SERVICE 4

No. 85-787

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

RUSSELL D. DAVES,
APPELLANT

V.

THE STATE BAR OF TEXAS,
APPELLEE

ON APPEAL FROM
THE SUPREME COURT OF TEXAS

SUPPLEMENTAL BRIEF

This brief is a supplement to Appellee's Motion To Dismiss Or Affirm.

Appellant claims that the No Reversible Error denial of his writ application is meaningless, and that the Supreme Court of Texas has not passed on the constitutionality of the advertising disclosure requirement at issue in this case.

It is with regard to the significance of the "n.r.e." refusal that this supplemental brief is submitted.

Subsequent to the filing of Appellee's motion to dismiss or affirm, an article appeared which supports Appellee's point that the constitutionality of the disclosure rule has been assessed and approved by the Supreme Court of Texas.

"The 'N.R.E.' stamp is in every sense a decision on the merits of the appeal.[6]" Judge Ted F. Robertson and James W. Paulsen, The Meaning (If Any) of an "N.R.E.," 48 Texas Bar Journal 1306 (Dec. 1985).

Footnote six, cited in the text reads,

> A good argument could be made from the language of subdivision 6 of art. 1728 that an "N.R.E." is "jurisdictional," since the statute provides:

> "The Supreme Court shall have appellate jurisdiction ... in any other case in which it is made to appear that an error of substantive law has been committed by the Court of Appeals which affects the judgment...." Tex. Rev. Civ. Stat. Ann. art. 1728 (Vernon Supp. 1985) (emphasis added). Whether "jurisdictional" or not, however, an "N.R.E." necessarily evidences some judgment on the merits of the appeal. Chief Justice McClendon of the Austin Court of Civil Appeals, speaking at a time when "Dismissed" could be the equivalent of an "N.R.E." today, explained it thus: "The Supreme Court had potential jurisdiction ... of the case upon that appeal .... Therefore the effect of the dismissal order constituted an adjudication by that court that the judgment of this court was "a correct one." Fisher v. City of Bartlett, 88 S.W.2d 1068, 1069 (Tex. Civ. App. -- Austin 1935, writ dism'd).

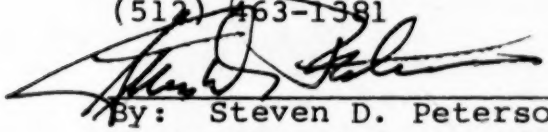
The full text of the article can be found in the cited issue of the Texas Bar Journal, available in the U.S. Supreme Court Library.

Respectfully submitted,

Steven D. Peterson
General Counsel

Adele M. Winn
Assistant General Counsel

Office of the
General Counsel
State Bar of Texas
P.O. Box 12487
Austin, TX 78711
(512) 463-1381

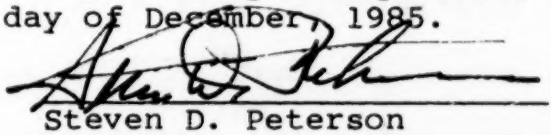


By: Steven D. Peterson
State Bar Card No. 15842000

COUNSEL OF RECORD
FOR APPELLEE

CERTIFICATE OF SERVICE

This is to certify that the above and foregoing Supplemental Brief has been served on David Vladeck, Public Citizen Litigation Group, Suite 700, 2000 "P" Street, N.W., Washington, D.C. 20036, by delivery of three true and correct copies to him by certified mail, return receipt requested, on the 20th day of December, 1985.



Steven D. Peterson